

## **SENATE BILL No. 101**

DIGEST OF SB 101 (Updated January 21, 2014 1:43 pm - DI 106)

Citations Affected: IC 35-31.5; IC 35-43.

**Synopsis:** Agricultural operations and trespass. Adds causing property damage to an agricultural operation to the existing crime of institutional criminal mischief. Increases the sentence enhancement monetary thresholds for criminal mischief and institutional criminal mischief. Provides that a person commits criminal trespass if, without the owner's permission, the person enters: (1) that portion of an agricultural operation that is used for production; or (2) any part of the real property of an agricultural operation and causes property damage.

Effective: July 1, 2014.

# Holdman, Steele, Young R

January 7, 2014, read first time and referred to Committee on Corrections & Criminal Law. January 23, 2014, amended, reported favorably — Do Pass.



#### Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

### **SENATE BILL No. 101**

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1	SECTION 1. IC 35-31.5-2-24.5 IS ADDED TO THE INDIANA
2	CODE AS A <b>NEW</b> SECTION TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1, 2014]: Sec. 24.5. "Authorized person", for
4	purposes of IC 35-43-2-2, has the meaning set forth in
5	IC 35-43-2-2(a).
6	SECTION 2. IC 35-43-1-2, AS AMENDED BY P.L.158-2013,
7	SECTION 453, IS AMENDED TO READ AS FOLLOWS
8	[EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who recklessly,
9	knowingly, or intentionally damages or defaces property of another
0	person without the other person's consent commits criminal mischief,
1	a Class B misdemeanor. However, the offense is:
2	(1) a Class A misdemeanor if the pecuniary loss is at least two
3	hundred fifty dollars (\$250) seven hundred fifty dollars (\$750)
4	but less than two thousand five hundred dollars (\$2,500); fifty
5	thousand dollars (\$50,000); and
6	(2) a Level 6 felony if:



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1	(A) the pecuniary loss is at least two thousand five hundred
2	$\frac{\text{dollars}}{\text{($50,000)}}$ ; fifty thousand dollars (\$50,000);
3	(B) the damage causes a substantial interruption or impairment
4	of utility service rendered to the public;
5	(C) the damage is to a public record; or
6	(D) the damage is to a law enforcement animal (as defined in
7	IC 35-46-3-4.5).
8	(b) A person who recklessly, knowingly, or intentionally damages:
9	(1) a structure used for religious worship;
10	(2) a school or community center;
11	(3) the property of an agricultural operation (as defined in
12	IC 32-30-6-1);
13	(3) (4) the grounds:
14	(A) adjacent to; and
15	(B) owned or rented in common with;
16	a structure or facility identified in subdivision $(1)$ or $(2)$ ; through
17	<b>(3)</b> ; or
18	(4) (5) personal property contained in a structure or located at a
19	facility identified in subdivision (1) or $(2)$ ; through (3);
20	without the consent of the owner, possessor, or occupant of the
21	property that is damaged, commits institutional criminal mischief, a
22	Class A misdemeanor. However, the offense is a Level 6 felony if the
23	pecuniary loss (or property damage, in the case of an agricultural
24	operation) is at least two hundred fifty dollars (\$250) seven hundred
25	fifty dollars (\$750) but less than two thousand five hundred dollars
26	(\$2,500), fifty thousand dollars (\$50,000), and a Level 5 felony if the
27	pecuniary loss (or property damage, in the case of an agricultural
28	operation) is at least two thousand five hundred dollars (\$2,500). fifty
29	thousand dollars (\$50,000).
30	(c) If a person is convicted of an offense under this section that
31	involves the use of graffiti, the court may, in addition to any other
32	penalty, order that the person's operator's license be suspended or
33	invalidated by the bureau of motor vehicles for not more than one (1)
34	year.
35	(d) The court may rescind an order for suspension or invalidation
36	under subsection (c) and allow the person to receive a license or permit
37	before the period of suspension or invalidation ends if the court
38	determines that the person has removed or painted over the graffiti or
39	has made other suitable restitution.
40	SECTION 3. IC 35-43-2-2, AS AMENDED BY P.L.203-2013,
41	SECTION 25, AND AS AMENDED BY P.L.158-2013, SECTION

462, IS CORRECTED AND AMENDED TO READ AS FOLLOWS



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1	[EFFECTIVE JULY 1, 2014]: Sec. 2. (a) As used in this section,
2	"authorized person" means a person authorized by an agricultural
3	operation to act on behalf of the agricultural operation.
4	(a) (b) A person who:
5	(1) not having a contractual interest in the property, knowingly or
6	intentionally enters the real property of another person after
7	having been denied entry by the other person or that person's
8	agent;
9	(2) not having a contractual interest in the property, knowingly or
10	intentionally refuses to leave the real property of another person
11	after having been asked to leave by the other person or that
12	person's agent;
13	(3) accompanies another person in a vehicle, with knowledge that
14	the other person knowingly or intentionally is exerting
15	unauthorized control over the vehicle;
16	(4) knowingly or intentionally interferes with the possession or
17	use of the property of another person without the person's consent;
18	(5) not having a contractual interest in the property, knowingly or
19	intentionally enters the:
20	(A) property of an agricultural operation that is used for
21	the production, processing, propagation, packaging,
22	cultivation, harvesting, care, management, or storage of an
23	animal, plant, or other agricultural product, including any
24	pasturage or land used for timber management; or
25	<b>(B)</b> dwelling of another person without the person's consent;
26	(6) knowingly or intentionally:
27	(A) travels by train without lawful authority or the railroad
28	carrier's consent; and
29	(B) rides on the outside of a train or inside a passenger car,
30	locomotive, or freight car, including a boxcar, flatbed, or
31	container without lawful authority or the railroad carrier's
32	consent;
33	(7) not having a contractual interest in the property, knowingly or
34	intentionally enters or refuses to leave the property of another
35	person after having been prohibited from entering or asked to
36	leave the property by a law enforcement officer when the property
37	is (A) vacant or designated by a municipality or county
38	enforcement authority to be abandoned property and (B) subject
39	to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8,
40	<del>IC 36-7-9, or IC 36-7-36</del> or an abandoned structure (as defined
41	in IC 36-7-36-1); <del>or</del>
42	(8) not having a contractual interest in the property,



1	knowingly or intentionally enters the real property of an
2	agricultural operation (as defined in IC 32-30-6-1) without the
3	permission of the owner of the agricultural operation or an
4	authorized person, and knowingly or intentionally engages in
5	conduct that causes property damage to:
6	(A) the owner of or a person having a contractual interest
7	in the agricultural operation;
8	(B) the operator of the agricultural operation; or
9	(C) a person having personal property located on the
10	property of the agricultural operation; or
11	(8) (9) knowingly or intentionally enters the property of another
12	person after being denied entry by a court order that has been
13	issued to the person or issued to the general public by
14	conspicuous posting on or around the premises in areas where a
15	person can observe the order when the property (4) has been
16	designated by a municipality or county enforcement authority to
17	be a vacant property, or an abandoned property, and (B) is subject
18	to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8,
19	IC 36-7-9, or IC 36-7-36 or an abandoned structure (as defined
20	in IC 36-7-36-1);
21	commits criminal trespass, a Class A misdemeanor. However, the
22	offense is a Class D Level 6 felony if it is committed on a scientific
23	research facility, on a key facility, on a facility belonging to a public
24	utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a
25	school bus or the person has a prior unrelated conviction for an offense
26	under this section concerning the same property. The offense is a
27	Level 6 felony, for purposes of subdivision (8), if the property
28	damage is more than seven hundred fifty dollars (\$750) and less
29	than fifty thousand dollars (\$50,000). The offense is a Level 5
30	felony, for purposes of subdivision (8), if the property damage is at
31	least fifty thousand dollars (\$50,000).
32	(b) (c) A person has been denied entry under subdivision subsection
33	$\frac{(a)(1)}{a}$ of this section (b)(1) when the person has been denied entry by
34	means of:
35	(1) personal communication, oral or written;
36	(2) posting or exhibiting a notice at the main entrance in a manner
37	that is either prescribed by law or likely to come to the attention
38	of the public; or
39	(3) a hearing authority or court order under IC 32-30-6,
40	IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.

(c) (d) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (a)(7) (b)(7) unless



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1	there is reasonable suspicion that criminal activity has occurred or is
2	occurring.
3	(d) (e) A person described in subsection (a)(7) (b)(7) violates
4	subsection $\frac{(a)(7)}{(b)(7)}$ unless the person has the written permission of
5	the owner, owner's agent, enforcement authority, or court to come onto
6	the property for purposes of performing maintenance, repair, or
7	demolition.
8	(e) (f) A person described in subsection (a)(8) (b)(9) violates
9	subsection (a)(8) (b)(9) unless the court that issued the order denying
10	the person entry grants permission for the person to come onto the
11	property.
12	(f) (g) Subsections (a), (b), (c), and (e) (f) do not apply to the
13	following:
14	(1) A passenger on a train.
15	(2) An employee of a railroad carrier while engaged in the
16	performance of official duties.
17	(3) A law enforcement officer, firefighter, or emergency response
18	personnel while engaged in the performance of official duties.
19	(4) A person going on railroad property in an emergency to rescue
20	a person or animal from harm's way or to remove an object that
21	the person reasonably believes poses an imminent threat to life or
22	limb.
23	(5) A person on the station grounds or in the depot of a railroad
24	carrier:
25	(A) as a passenger; or
26	(B) for the purpose of transacting lawful business.
27	(6) A:
28	(A) person; or
29	(B) person's:
30	(i) family member;
31	(ii) invitee;
32	(iii) employee;
33	(iv) agent; or
34	(v) independent contractor;
35	going on a railroad's right-of-way for the purpose of crossing at a
36	private crossing site approved by the railroad carrier to obtain
37	access to land that the person owns, leases, or operates.
38	(7) A person having written permission from the railroad carrier
39	to go on specified railroad property.
40	(8) A representative of the Indiana department of transportation
41	while engaged in the performance of official duties.
42	(9) A representative of the federal Railroad Administration while



1	engaged in the performance of official duties.
2	(10) A representative of the National Transportation Safety Board
3	while engaged in the performance of official duties



#### COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 101, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 6 through 16, begin a new paragraph and insert: "SECTION 2. IC 35-43-1-2, AS AMENDED BY P.L.158-2013, SECTION 453, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if the pecuniary loss is at least two hundred fifty dollars (\$250) seven hundred fifty dollars (\$750) but less than two thousand five hundred dollars (\$2,500); fifty thousand dollars (\$50,000); and
- (2) a Level 6 felony if:
  - (A) the pecuniary loss is at least two thousand five hundred dollars (\$2,500); fifty thousand dollars (\$50,000);
  - (B) the damage causes a substantial interruption or impairment of utility service rendered to the public;
  - (C) the damage is to a public record; or
  - (D) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5).
- (b) A person who recklessly, knowingly, or intentionally damages:
  - (1) a structure used for religious worship;
  - (2) a school or community center;
  - (3) the property of an agricultural operation (as defined in IC 32-30-6-1);
  - (3) (4) the grounds:
    - (A) adjacent to; and
    - (B) owned or rented in common with;
  - a structure or facility identified in subdivision (1) or (2); through (3); or
  - (4) (5) personal property contained in a structure or located at a facility identified in subdivision (1) or (2); through (3);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss (or property damage, in the case of an agricultural



operation) is at least two hundred fifty dollars (\$250) seven hundred fifty dollars (\$750) but less than two thousand five hundred dollars (\$2,500), fifty thousand dollars (\$50,000), and a Level 5 felony if the pecuniary loss (or property damage, in the case of an agricultural operation) is at least two thousand five hundred dollars (\$2,500). fifty thousand dollars (\$50,000).

- (c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.
- (d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that the person has removed or painted over the graffiti or has made other suitable restitution."
  - Page 2, line 22, delete "real property or" and insert ":
    - (A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management; or (B)".
- Page 3, line 3, delete "a pecuniary loss" and insert "**property** damage".
  - Page 3, line 8, after "operation;" insert "or".
  - Page 3, delete lines 9 through 15.
  - Page 3, line 16, delete "(10)" and insert "(9)".
- Page 3, line 32, delete "subdivisions (8) through (9)," and insert "**subdivision (8),**".
- Page 3, line 33, delete "pecuniary loss" and insert "**property damage**".
- Page 3, line 35, delete "subdivisions (8) through (9)," and insert "**subdivision (8).**".
- Page 3, line 36, delete "pecuniary loss" and insert "**property** damage".



Page 4, line 13, delete "(b)(10)" and insert "(b)(9)". Page 4, line 14, delete "(b)(10)" and insert "(b)(9)". Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 101 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 2.

